IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR
ORDER
D.B. Civil Special Appeal (W) No.233/07
In S.B. Civil Writ Petition No.876/2000
The Indian Hotels Co. Ltd.
Vs.
State of Raj.& Ors.

Date of Judgment :: 2nd April, 2007

HON'BLE THE CHIEF JUSTICE MR.S.N. JHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Paras Kuhad, Advocate with
Shri Sandeep Taneja, Advocate for
appellant.

(Per–Hon'ble Mr. Mohammad Rafiq, J.)

REPORTABLE

Under challenge in this special appeal is the judgment dated 22.1.2007 passed by the learned Single Judge whereby the writ petition filed by the appellant against the show cause notice issued by Collector (Stamps) in exercise of his powers under Section 47A of the

Indian Stamp Act, 1899 read with Rule 66A of the Rajasthan Stamp Rules, 1955 was dismissed. The learned Single Judge held that the writ petition cannot be directly entertained against a mere show cause notice particularly because it involves disputed questions of fact. While therefore dismissing the writ petition as not maintainable the learned Single Judge directed the Collector (Stamps) to dispose of the matter as expeditiously as possible, preferably within 60 days.

Factual matrix of the case is that a lease deed was executed between the appellant company and one Shri Vishvendra Singh on 30th March, 1998 who leased out to the appellant company his immovable property situated at Bharatpur, inter alia, the premises known as `Moti Mahal

Palace' together with land pertaining thereto measuring about 80 acres and other buildings, structures etc. The lease deed was presented before the Sub-Registrar, Bharatpur for its registration on 30th March, 1998 along with demand draft of Rs.32.07 lacs being 10% of the market value towards stamp duty and another demand draft of Rs.3,20,800/- towards the registration charges payable at the rate of 1% of the market value. The Sub-Registrar required the appellant company to submit the Valuation Report of the leased property. The appellant company submitted such Valuation Report on 23.3.1998 which was prepared by a government approved valuer evaluating the land at a sum of Rs.242.90 lacs and building at Rs.77.79 lacs, thus totaling

to Rs.320.69 lacs. The Sub-Registrar then required the appellant company by letter dated 27.10.1998 to submit the plans of the land and building, which were duly submitted by the appellant along with its letter dated 2.11.1998. The Sub-Registrar then again by letter dated 5.11.1998 required the appellant company to submit the blue print of the said site plan and that was also supplied by appellant vide letter dated 7.12.1998. He then conducted the site inspection of the property on 11.1.1999. It was thereafter that on 13.3.1999, the appellant company received a notice dated 10.3.1999 from the Sub-Registrar purported to have been issued under Section 47D of the Indian Stamp Act, 1899 (for short `the Act') informing that the valuation of the

property in question declared as Rs.3,20,70,000/- according to the material available with him was not acceptable and that the correct valuation of the property works out to Rs.29,82,05,813 on which a sum of Rs.2,98,20,582 was payable as stamp duty. It was directed that the appellant company may accordingly deposit the balance amount of Rs.2,92,74,741/- in the office of the Sub-Registrar by 17.3.1999, failing which the matter would stand referred to the respondent no.2 Collector (Stamps), Bharatpur and the appellant may appear before him on 22.3.1999.

It was thereafter that the appellant addressed a letter dated 18.3.1999 to the Collector (Stamps), Bharatpur stating that the notice issued by the Sub-

Registrar was arbitrary and that the notice did not disclose the basis for determination of the market value referred to therein. It was requested that the Sub-Registrar be required to furnish complete information on the basis of which he arrived at the said valuation. The Collector (Stamps), Bharatpur then issued show cause notice to the appellant on 23.3.1999 under Section 47A(2) of the Indian Stamps Act read with Rule 66A of the Rajasthan Stamps Rules to the effect that the appellant by undervaluing the property in the lease deed has attempted to evade the tax and accordingly the matter has been referred to him and therefore the appellant should appear before him to give its version on next date of hearing

fixed on 29.3.1999. Thereupon the appellant again by application dated 27.3.1999 requested the Collector (Stamps) to supply the material on the basis of which the indicated valuation was based. The Rajasthan State Legislature adopted Indian Stamp Act, 1899 by enacting Rajasthan Stamp Law (Adaptation) Act, 1952 (Act No.VII of 1952). It is against the backdrop of these facts that this writ petition was filed with the prayers aforesaid. Learned Single Judge after hearing the arguments advanced by learned counsel for the parties dismissed the writ petition by the impugned judgment. Hence the appeal.

We have heard Shri Paras Kuhad, the learned counsel for the petitioner and perused the material on record.

Shri Paras Kuhad, the learned counsel for the petitioner argued that the learned Single Judge has erred in dismissing the writ petition as having no merits despite the fact that in earlier portion of the judgment the learned Single Judge has observed that the matter involves disputed questions of fact and the appellant was having the remedy of challenging the final order that may be passed by Collector (Stamps). According to him, the order was thus contradictory in terms which cannot be sustained in law. Number of arguments were raised before the learned Single Judge with reference to various judgments of Hon'ble Supreme Court which were cited in support thereof. The learned Single Judge however dismissed the writ petition by a very

brief order without deciding the legal issues raised. It was argued that the writ petition can be entertained even against the show cause notice because the appellant is questioning the very competence of the Collector (Stamps) to initiate the proceedings which were completely without jurisdiction. The bar of alternative remedy, being a self imposed restriction, therefore, cannot apply to the present writ petition because the action of the Collector in issuing the impugned show cause notice suffers from inherent lack of jurisdiction. The learned Single Judge failed to appreciate that existence of an order of assessment under Rule 59B of the Rajasthan Stamps Rules, 1955 was sine-qua-non for initiation of a valid

proceeding under Section 47A of the Act. The statutory scheme mandates that before a reference is made, the Registering Authority has to make an assessment about the value of the property and then only a reference under Section 47A supra can be made provided that such assessment reveals that the instrument does not correctly set out the value of the property. In order to constitute an assessment, proceedings were required to be held in the manner laid down under Rule 59B, supra, which provides for consideration of all the relevant facts having bearing on the value of the property. The expression “assessment” and “consideration” clearly bear it out that enquiry envisaged under that provision ought to be objective in nature,

particularly when such enquiry is quasi-judicial in nature. No such assessment can be made unless the affected party has been provided with opportunity of producing his version of the matter. The Sub-Registrar, who is Registering Authority, acted in contravention of the provisions of the Act and the Rules by referring the instrument to the Collector without scrutinizing the same and without even holding the enquiry with respect to determination of the market value. The Registering Authority has to assess the market value properly after undertaking an independent enquiry by taking into consideration all facts affecting duty as also the rates recommended by the District Level Committee and then pass an appropriate,

reasoned and speaking assessment order. Neither such reasons have been disclosed, nor the basis of arriving at the satisfaction which the Registering Authority reached, were recorded. Nothing has been brought on record as to how the instrument could be so enormously valued by him.

Shri Paras Kuhad also argued that the only basis on which the Registering Authority appears to have founded his satisfaction is the alleged valuation report dated 10.3.1999 and such satisfaction was vitiated by reason of the fact that the said valuation report was full of interpolations / fabrications which speaks very poorly about the authenticity of a government record. It was argued that entry No.4823 was

interpolated as entry no.4823A so as to justify insertion of another entry. The very foundation of the so called valuation made by the Registering Authority was therefore bad in law, thus vitiating the entire exercise. The impugned show cause notice and consequential proceedings are therefore liable to be declared illegal and quashed and set aside.

In order to buttress his arguments that the writ petition under article 226 of the Constitution can be maintained even against a show cause notice where action of the authority issuing notice suffers from the inherent lack of jurisdiction, Shri Paras Kuhad relied on the number of decisions of Hon'ble Supreme Court. In this connection, he

relied on Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors., (1998) 8 SCC 1, Calcutta Discount Co. Ltd. vs. Income-tax Officer, Companies District-I, Calcutta & Anr., AIR 1961 SC 372, State of Punjab vs. Mohabir Singh & Ors. (1996) 1 SCC 609, Deepa Vs. State of Rajasthan & Ors., (1996) 1 SCC 612, Ganga Saran & Sons P. Ltd. vs. Income-tax Officer & Ors. (1981) 130 ITR 1, Income Tax Officer, I Ward, Distt. VI, Calcutta & Ors. vs. Lakhmani Mewal Das, (1976) 103 ITR 437, Sales Tax Officer vs. Uttareshwari Rice Mills, (1973) 89 ITR 6 (SC), Ramesh Chand Bansal & Ors. vs. District Magistrate/Collector Ghaziabad & Ors., (1999) 5 SCC 62, Budhia Swain & Ors. vs. Gopinath Deb & Ors. (1999) 4 SCC 396, Management of Express Newspaper

Private) Ltd. vs. The Workers & Ors., AIR 1963 SC 569 and Mohammed Hasnuddin Vs. State of Maharashtra, (1979) 2 SCC 572.

We have given our thoughtful consideration to the arguments advanced by learned counsel for the appellant and perused the material on record.

Although on facts it is found that the Registering Authority prior to making a reference to the Collector (Stamps) called upon the appellant to produce the valuation report of the property, site plan along with all measurements of the building, blue print of the site plan and also inspected the land and building in question but the value of the property indicated by him in his notice dated 10.3.1999 can merely be considered as formation of tentative opinion by him on

which the show cause notice was issued to the appellant eliciting its response and if this was not acceptable by the appellant, he simultaneously also informed the petitioner-appellant that the matter would stand referred to the Collector (Stamps). The Collector (Stamps) then issued the notice u/s. 47A (2) supra to the appellant on 23.3.1999. Argument of the learned counsel for the appellant that a lawfully framed assessment order ought to have preceded the issuance of the show cause notice proceeds on the ignorance of the specific provision contained in Section 47A of the Act. While assessment of the stamp duty may be a sine-qua-non for registration of an instrument but the enquiry that was made by the Sub-Registrar in the present

case was merely confined to arriving at the required satisfaction envisaged in Section 47A, supra, to give him the reason of belief that the market value of the property has not been truly set forth in the instrument so as to make a reference to the Collector (Stamps) in terms of the said provision. Section 47A was inserted by Rajasthan Stamp (Amending) Act No.16 of 1966 within which a further amendment was made. While the original provisions of Section 47A which were enforced w.e.f. 3rd June, 1966 provided that notwithstanding anything contained in the Registration Act, 1908 and the rules made thereunder as in force in Rajasthan where in the case of any instrument relating to an immovable property chargeable with an ad valorem

duty on the market value of the property as set forth in the instrument, the registering officer has, while registering the instrument, reason to believe that the market value of the property has not been truly set forth in the instrument, he may either before or after registering the instrument, send it in original to the Collector for determination of the market value. The words “either before or after registering” indicated above in the underlined portion were substituted for the originally engrafted words “while registering the instrument” by Rajasthan Stamp (Amending) Act No.17 of 1989 which came into force from 18.9.1988. In the originally framed Section 47A, reference could be made only at the stage of

registering the instrument, therefore, the necessity for making the assessment of the valuation for the purpose of payment of stamp duty could be insisted upon. If the aforesaid amended provision has provided for making a reference either before or after “registering the instrument”, the argument of the learned counsel for the appellant that the assessment should necessarily precede the reference envisaged under Section 47A cannot be accepted. What is more, reading of Section 47A in its entirety makes it clear that where the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument, he may either before or after registration send it in original to the Collector for

determination of the market value and to assess and charge the duty in conformity with such determination together with a penalty. While making a reference, therefore, the instrument is required to be sent to Collector in original for determination of the market value and assessing and charging the duty and this clearly show the intention of the legislature that the reference is required to be made not only for the purpose of determination of the market value but also for assessment. Considering thus, we are not inclined to accept the argument advanced by learned counsel for the applicant that a reference under Section 47A should always be preceded by an assessment or the stamp duty.

Coming now to the number of judgments cited by learned counsel for the appellant to overcome the objection of alternative remedy, we may only state that there can be no quarrel with the proposition of law laid down in those judgments but what we have to examine in the present case is whether the impugned show cause notice issued by the Collector (Stamps), Bharatpur to the appellant does really suffer from lack of jurisdiction and further that the controversy raised in the present petition is such as can be straight away decided by this Court in exercise of its power of judicial review under Article 226 of the Constitution without their being a determination of the true market value and consequential assessment of the payable stamp duty.

Although the judgments which the learned counsel for the appellant cited are all relating to the assessment proceedings under various enactments but there are only two judgments which pertain to assessment under the Indian Stamps Act, 1899, one in Mahabir Singh, supra, and the other in Ramesh Chand Bansal, supra. In Ramesh Chand Bansal, the basis for determination in the market value and consequential stamp duty was a Circular issued by the Government while fixing certain rates under the relevant rules which stipulated that such rates would automatically be deemed increased by 20% after one year. In those facts, their Lordships held that under Rule 340A of the U.P. Stamps Rules 1942, the Collector has to supply biennially a copy

of the statement of circle rates and the average price of the land in every pargna, corporation or local body of his district which would mean supplying such statement once in two years. It was held that there was no inhibition under the said rules or in other rules or under the Act which restricted the Collector to give such rates differently for two years. The validity of the Circular and the notice of the Collector was therefore upheld. We hardly see any reason how this judgment would help the appellant in so far as the present case is concerned.

Now, Mahabir Singh, supra, of course is a case wherein their Lordships of the Supreme Court held that if the Registering Authority is satisfied that the instrument is under valued, he is

obliged to register the instrument and then only make a reference to the Collector under Section 47A(2) and (3). But the State amendment which is available in Section 47A(1) of the Act in the State of Rajasthan, was not there before the Supreme Court. Clearly, such an amendment would make a material difference to the applicability of this judgment to the facts of the present case.

So far as the judgment of Hon'ble Supreme Court in Whirlpool Corporation, supra, relied on by learned counsel for the appellant is concerned, what was held in that case was that the jurisdiction of the High Court in entertaining the writ under Article 226 of the Constitution, in spite of the alternative statutory remedy, is not

affected especially in a case where the authority against whom writ is filed is shown to have had no jurisdiction or purported to usurp jurisdiction without any legal foundation. Those observations of the Hon'ble Supreme Court in para 21 have to be understood in the context of simultaneously recorded finding in para 62 of the judgment where it was held that since the proceedings were pending before the High Court, it was only the High Court which was to be treated as the Tribunal in the meaning of Section 111 of the Trade and Merchandise Marks Act, 1958 and therefore, the Registrar had no jurisdiction to issue the show cause notice. The judgment in Calcutta Discount Co., supra, also was to the same effect wherein it was held that if the executive

authority passing the order acted without jurisdiction, an application for writ of certiorari under Article 226 can be entertained. To the similar effect are the other judgments cited by learned counsel for the appellant.

Since we are not inclined to uphold the argument of the learned counsel for the appellant that action of either the Registering Authority in making the reference to the Collector or that of the Collector in issuing show cause notice to the appellant suffers from inherent lack of jurisdiction or that they acted completely without the jurisdiction, therefore, the cited judgments may not be of any help to the appellant. Even otherwise, as held by their Lordships in Duncans Industries Ltd. Vs. State of U.P.

& Ors., (2000) 1 SCC 633 on consideration of the provisions of Section 47A of the Act, the question of valuation is basically a question of fact. When the petitioner is seeking to question the jurisdiction of the Registering Authority and / or the Collector, by asserting that both of them lacked in jurisdiction, these facts become jurisdictional facts and considering the matter from that angle also the writ petition against the show cause notice alone cannot be entertained. Apart from the fact that the petition has been filed solely against the show cause notice, we are satisfied that determination of market value and assessment of the stamp duty would necessitate examination of the material by the Collector (Stamps) as envisaged in

Section 47A of the said Act. This indeed requires determination of factual aspects which are essentially debatable issues involving complex nature of disputed question of facts. Enquiry into such questions of fact may require either of the parties to produce material and evidence in support of their respective cases for which the Collector (Stamps) is the only appropriate authority best suited to evaluate such material / evidence and come to a definite finding as to the correct determination of the market value and assessment of the payable stamp duty. We hardly see any extraordinary reason to straightaway entertain the writ petition on such dispute since we are not inclined to uphold the argument that the action of the

Collector in issuing show cause notice to the appellant suffers from inherent lack of jurisdiction or for that matter, he in issuing the impugned show cause notice acted without jurisdiction.

We are not inclined to entertainment the argument as to the genuineness or otherwise, of the allegedly overwritten or interpolated valuation report which according to the appellant was the sole basis for making of the reference by the Registering Authority. The appellant can raise all these arguments before the Collector (Stamps) which can be better appreciated by him alone.

We do not therefore find any merit in this appeal. The appeal is accordingly dismissed with no order as to costs.

RS/ (Mohammad Rafiq),J. (S.N.Jha),CJ.